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Willow Wren Turkal, and Sydney Frederick-Osborne,
on behalf of themselves and all others similarly situated*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

CAROLINA BERNAL STRIFLING,
WILLOW WREN TURKAL, and SYDNEY
FREDERICK-OSBORNE on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

TWITTER, INC., and X CORP.,

Defendants

Case No. 4:22-cv-07739-JST

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY**

1 Plaintiffs file this notice of supplemental authority to bring to the Court's attention a
 2 decision issued this week in another case alleging class discrimination claims against Twitter,
 3 *Zeman v. Twitter Inc. et al.*, Case No. 23-cv-01786-SI (N.D. Cal. Aug. 29, 2023) (attached here
 4 as Exhibit A).

5 In the order, Judge Illston denied Twitter's motion to dismiss the age discrimination
 6 disparate impact claims raised in *Zeman* and denied Twitter's motion to strike class allegations.
 7 The court dismissed the disparate treatment claim with leave to amend.¹

8 In holding that Zeman adequately stated a claim for disparate impact, the court noted that:
 9 "Twitter's contention that plaintiff must identify the factors used by Twitter's managers is
 10 incorrect." *Id.* at 9. The court went on to explain that "Plaintiff has adequately alleged a facially
 11 neutral employment practice by alleging that employment decisions were delegated to the
 12 subjective discretion of supervisors." *Id.* at 9–10 (citing *Rose v. Wells Fargo & Co.*, 902 F.2d
 13 1417, 1420 (9th Cir. 1990)). Judge Illston further rejected Twitter's arguments "that plaintiff has
 14 failed to allege a statistically significant disparity to support his disparate impact claim," holding
 15 that "Plaintiff's allegations are enough to survive" under binding Ninth Circuit precedent. *Id.* at
 16 10. Notably, a similar statistical analysis performed in this case showed much more stark
 17 statistical disparities between layoffs of men and women than the disparities that Judge Illston
 18 found adequate to state a claim of age discrimination in *Zeman*.
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 22 ¹ The court indicated that the plaintiff could cure the disparate treatment allegations by
 23 amending to add allegations regarding his performance being satisfactory and that he was
 24 similarly situated to younger employees who were laid off. Such allegations are already
 25 included in this case. *See* Dkt. 41 ¶¶ 9–11 ("Throughout her employment with Twitter, Ms.
 26 Strifling's performance met the Company's expectations.... Throughout her employment with
 27 Twitter, Ms. Turkal's performance met the Company's expectations.... Throughout her
 28 employment with Twitter, Ms. Frederick-Osborne's performance met the Company's
 expectations."); *id.* ¶¶ 6–8, 23, 33–40, 44–55 (pleading sex and age discrimination as compared
 to other similarly situated coworkers).

1 Finally, Judge Illston rejected Twitter's arguments regarding striking the complaint's
 2 class allegations, explaining:

3
 4 “[T]he granting of motions to dismiss class allegations before discovery has
 5 commenced is rare” because “the shape and form of a class action evolves only
 6 through the process of discovery.” *In re Wal-Mart Stores, Inc. Wage & Hour*
 7 *Litig.*, 505 F. Supp. 2d 609, 615 (N.D. Cal. 2007); *see also Thorpe v. Abbott*
 8 *Lab'ys, Inc.*, 534 F. Supp. 2d 1120, 1125 (N.D. Cal. 2008) (“Motions to strike
 9 class allegations are disfavored because a motion for class certification is a more
 10 appropriate vehicle . . .”). Here, the Complaint alleges that the RIF following
 Musk's acquisition of Twitter was a continuing event in which “some were laid off
 earlier and many were laid off after” November 4. Compl. ¶ 20. While the
 proposed class is broad and may be narrowed after discovery, to strike the class
 allegations now would be premature.

11 *Id.* at 10–11. Thus, Judge Illston rejected Twitter's attempt to limit the case at the outset only to
 12 employees who were laid off on November 4, 2023, but instead allowed Plaintiff (who was laid
 13 off that day) to proceed to discovery encompassing separations that occurred after that date as
 14 well.

15 Plaintiffs submit that this decision further supports their request that this Court deny
 16 Defendants' motion to dismiss this case.²

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 28 ² Plaintiffs had moved to consolidate all the pending cases in this district challenging
 Twitter's layoffs as discriminatory, including this case, *Zeman*, and *Borodaenko et al v. Twitter*
et al, Case No. 22-cv-07226 (N.D. Cal.) (disability and sex discrimination). That motion was
 denied, however, by the court in *Borodaenko*. Plaintiffs submit that it is thus particularly
 important that the different judges overseeing these separate cases ensure consistency among the
 legal rulings in these cases.

1 Dated: August 31, 2023

Respectfully submitted,

2 CAROLINA BERNAL STRIFLING, WILLOW
3 WREN TURKAL, and SYDNEY FREDERICK-
4 OSBORNE, on behalf of themselves and all others
similarly situated,

5 By their attorneys,

6 /s/ Shannon Liss-Riordan

7 Shannon Liss-Riordan, SBN 310719

8 Thomas Fowler (*pro hac vice* forthcoming)

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13 **CERTIFICATE OF SERVICE**

14 I, Shannon Liss-Riordan, hereby certify that a true and accurate copy of this document
15 was served on counsel for Defendant Twitter, Inc. via the CM/ECF system on August 31, 2023.
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18 /s/ Shannon Liss-Riordan

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